

1 **CHAPTER 821. TEXAS PAYDAY RULES**

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3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**
6 **OF STATE.**

7
8 **ON AUGUST 23, 2022, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
9 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

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11 Publication Date of the Proposal in the *Texas Register*: **September 9, 2022**

12 End of Comment Period: **October 10, 2022**

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14 The Texas Workforce Commission ("TWC" or "Agency") proposes the repeal of the following
15 section in Chapter 821, relating to Texas Payday Rules:

16
17 Subchapter C, Wage Claims, §821.45

18
19 TWC proposes the following new sections to Chapter 821, relating to Texas Payday Rules:

20
21 Subchapter C. Wage Claims, §821.48 and §821.49

22
23 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

24 The purpose of the proposed Chapter 821 rule change is to modify the chapter to allow the
25 Agency's Labor Law department to reissue determinations.

26
27 Under Texas Labor Code, Chapter 61, also referred to as the Texas Payday Law, the Texas
28 Legislature granted the Agency authority to adjudicate wage claims and issue preliminary wage
29 determination orders (PWDOs). After issuing a PWDO, the parties have 21 days to appeal. If no
30 appeal is filed, then the order becomes final "for all purposes." If appealed, the Wage Claim
31 Appeal Tribunal (WCAT) will hold a hearing and issue a decision. The WCAT decision
32 becomes final 14 days after mailing unless a party appeals to TWC's three-member Commission
33 (Commission). A decision of the Commission becomes final 14 days after mailing unless a party
34 files a Motion for Rehearing or for judicial review of the Commission's decision.

35
36 The Texas Payday Law and TWC rules do not state whether the Agency may reissue a corrected
37 PWDO. Currently, when an error is made on the PWDO or additional information becomes
38 available between issuance of the PWDO and when the decision is final, there is no clear
39 authority for the Agency to issue a corrected PWDO. This can result in costly appeal hearings to
40 resolve minor clerical errors.

41
42 In statute and rule related to unemployment claims, the Agency has similar authority to that
43 proposed in this rulemaking. Texas Labor Code, §212.054 allows for an examiner to issue a
44 redetermination of an unemployment determination if there is an error or upon the discovery of
45 new information. The examiner has 14 days from the mailing date of the original determination
46 to issue the redetermination. The 14 days includes the period prior to the original determination

1 becoming final. An unemployment examiner may issue a redetermination to correct a clerical or
2 machine error at any time during a claimant's benefit year.

3
4 Title 40 Texas Administrative Code (TAC) §815.16(6)(B) allows the Appeal Tribunal for
5 unemployment hearings to issue a corrected decision as follows:

6
7 "At any time during the 14-day period from the date a decision on an appeal is mailed,
8 unless a party of interest has already appealed to the Commission, the appeal tribunal or
9 the supervisor of appeals may assume continuing jurisdiction over the appeal for the
10 purpose of reconsidering the issues on appeal and issuing a corrected decision. During the
11 period in which continuing jurisdiction is assumed, the appeal tribunal, after notice to the
12 parties, may take any additional evidence or secure any additional information it deems
13 necessary to issue a decision."
14

15 Clear written authority in rule would allow TWC to exercise plenary power over decisions which
16 have mailed but are not yet final. As proposed, TWC would not exercise this authority if an
17 appeal has been filed. A reissued PWDO would void and replace any prior incorrect PWDOs,
18 and the appeal period would start again allowing either party 21 days to file an appeal from the
19 mailing date of the reissued PWDO.
20

21 Texas Payday Law appeals rules and procedures are governed by current rule 40 TAC §821.45,
22 which incorporates the rules and hearing procedures set out in TWC's Unemployment Insurance
23 rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or
24 contrary to provisions set out under the Texas Payday Rules or the Texas Payday Act.
25

26 Finally, Texas Government Code, §2001.039 requires that every four years each state agency
27 review and consider for reoption, revision, or repeal each rule adopted by that agency. TWC
28 conducted a rule review of Chapter 821. Any changes are described in Part II of this preamble.
29

30 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

31 **SUBCHAPTER C. WAGE CLAIMS**

32 TWC proposes the following amendments to Subchapter C:
33

34 **§821.45. Appeals.**

35 Section 821.45 is repealed and the language is moved to new §821.49.
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37 **§821.48. Corrected Preliminary Wage Determination Order**

38 New §821.48 provides that if an examiner discovers an error or receives additional information
39 not previously available when the determination was made, the examiner may reconsider and
40 reissue the PWDO within the 21-day period provided for in Texas Labor Code, §61.054.
41

42 New §821.48 is necessary to allow for a full and factually correct PWDO to be rendered to the
43 parties when an error is made or additional information becomes available before the decision
44 becomes final. New §821.48 provides payday examiners with similar authority to unemployment
45 examiners, albeit with a 21-day redetermination period per Texas Labor Code, §61.054. Similar
46

1 to 40 TAC §815.16(6)(B), if a timely appeal is filed within the 21-day period, the Labor Law
2 department would no longer have authority to reissue a corrected PWDO once that appeal is
3 filed. Labor Law staff determined this to be a best practice to avoid interference with any actions
4 the WCAT may have already taken with the filing of the appeal. The reissued PWDO would
5 supersede any previous incorrect PWDOs. Either party would then have 21 days from the
6 mailing date of the most recent reissued PWDO to file an appeal.
7

8 New §821.48 includes a caveat for instances in which the examiner has mailed the PWDO to a
9 party's wrong address. This would only apply to errors made by the examiner, and not to
10 situations in which the party provided the Agency with the wrong address.
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12 **§821.49. Appeals.**

13 New §821.49 replaces repealed §821.45. The language in §821.45 is moved to new §821.49 to
14 logically follow the corrected PWDO process in the rules.
15

16 **PART III. IMPACT STATEMENTS**

17 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the
18 rules will be in effect, the following statements will apply:
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20 There are no additional estimated costs to the state and to local governments expected as a result
21 of enforcing or administering the rules.
22

23 There are estimated cost reductions to the state and to local governments as a result of enforcing
24 or administering the rules because the number of appeals to PWDOs will be reduced with the
25 ability to issue corrected PWDOs for minor clerical issues. TWC does not have sufficient data to
26 precisely estimate those cost reductions.
27

28 There are no estimated losses or increases in revenue to the state or to local governments as a
29 result of enforcing or administering the rules.
30

31 There are no foreseeable implications relating to costs or revenue of the state or local
32 governments as a result of enforcing or administering the rules.
33

34 There are no anticipated economic costs to individuals required to comply with the rules.
35

36 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
37 communities as a result of enforcing or administering the rules.
38

39 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that
40 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,
41 does not apply to this rulemaking.
42

43 **Takings Impact Assessment**

44 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
45 affects private real property, in whole or in part or temporarily or permanently, in a manner that
46 requires the governmental entity to compensate the private real property owner as provided by

1 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
2 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that
3 would otherwise exist in the absence of the governmental action, and is the producing cause of a
4 reduction of at least 25 percent in the market value of the affected private real property,
5 determined by comparing the market value of the property as if the governmental action is not in
6 effect and the market value of the property determined as if the governmental action is in effect.
7 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas
8 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as
9 discussed elsewhere in this preamble, is to modify Chapter 821 to allow the Agency's Labor Law
10 department to reissue determinations.

11
12 The proposed rulemaking action will not create any additional burden on private real property or
13 affect private real property in a manner that would require compensation to private real property
14 owners under the United States Constitution or the Texas Constitution. The proposal also will
15 not affect private real property in a manner that restricts or limits an owner's right to the property
16 that would otherwise exist in the absence of the governmental action. Therefore, the proposed
17 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

18 19 Government Growth Impact Statement

20 TWC determined that during the first five years the rules will be in effect, they:

- 21 --will not create or eliminate a government program;
- 22 --will not require the creation or elimination of employee positions;
- 23 --will not require an increase or decrease in future legislative appropriations to TWC;
- 24 --will not require an increase or decrease in fees paid to TWC;
- 25 --will not create a new regulation;
- 26 --will not expand, limit, or eliminate an existing regulation;
- 27 --will not change the number of individuals subject to the rules; and
- 28 --will not positively or adversely affect the state's economy.

29 30 Economic Impact Statement and Regulatory Flexibility Analysis

31 TWC determined that the rules will not have an adverse economic impact on small businesses or
32 rural communities, as the proposed rules place no requirements on small businesses or rural
33 communities.

34
35 Mariana Vega, Director, Labor Market Information, determined that there is not a significant
36 negative impact upon employment conditions in the state as a result of the rules.

37
38 Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, determined that for each
39 year of the first five years the rules are in effect, the public benefit anticipated as a result of
40 enforcing the proposed rules will be a more efficient system that will reduce unnecessary appeals
41 for minor clerical issues.

42
43 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
44 within TWC's legal authority to adopt.

45 46 **PART IV. PUBLIC COMMENTS**

1 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov
2 and must be received no later than October 10, 2022.

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4 **PART V. STATUTORY AUTHORITY**

5 The rules are proposed under Texas Labor Code, §61.002(a)(2), which allows TWC to adopt
6 rules as necessary to implement Texas Labor Code, Chapter 61.

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8 The proposed rules affect Texas Labor Code, Chapter 61.

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(c) Hearings conducted under the Act are subject to the rules and hearing procedures set out in Chapter 815 of this title (relating to Unemployment Insurance), except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter or under the Act.